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THE DIAL CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SAN FRANCISCO TECHNOLOGY INC.,

Case No. 5:10-cv-00966-JF

v.
Plaintiffs,

**STIPULATION STAYING ALL
PROCEEDINGS UNTIL THE
FEDERAL CIRCUIT ISSUES A FINAL
DECISION IN STAUFFER AND
SETTING DEADLINE FOR CERTAIN
DEFENDANTS TO MOVE OR PLEAD
TO 30 DAYS THEREAFTER AND
[PROPOSED] ORDER**

THE GLAD PRODUCTS COMPANY,
BAJER DESIGN & MARKETING INC.,
BAYER CORPORATION, BRIGHT IMAGE
CORPORATION, CHURCH & DWIGHT
CO. INC., COLGATE-PALMOLIVE
COMPANY, COMBE INCORPORATED,
THE DIAL CORPORATION, EXERGEN
CORPORATION, GLAXOSMITHKLINE
LLC, HI-TECH PHARMACAL CO. INC.,
JOHNSON PRODUCTS COMPANY INC.,
MAYBELLINE LLC, MCNEIL-PPC INC.,
MEDTECH PRODUCTS INC., PLAYTEX
PRODUCTS INC., RECKITT BENCKISER
INC., ROCHE DIAGNOSTICS
CORPORATION, SOFTSHEEN-CARSON
LLC, SUN PRODUCTS CORPORATION,
SUNSTAR AMERICAS INC.

Defendants.

1 Plaintiff San Francisco Technology Inc. (“Plaintiff”) and the undersigned defendants, The
2 Dial Corporation and Johnson Products Company Inc. (“Defendants”), through their respective
3 counsel, hereby make the following stipulation (the “Stipulation”):

4 WHEREAS, Plaintiff filed its complaint (Dkt. No. 1) on March 5, 2010 (the “Complaint”)
5 alleging that Defendants have falsely marked articles in violation of 35 U.S.C. § 292; and

6 WHEREAS, Plaintiff had earlier filed a substantially similar complaint asserting the same
7 false marking claim against other defendants in *San Francisco Technology Inc. v. Adobe Systems*
8 *Incorporated, et al.*, Case No. 2009-06083 (“Adobe”), on December 30, 2009; and

9 WHEREAS, on April 13, 2010, after full briefing and argument, Judge Seeborg of the
10 Northern District of California stayed *Adobe* pending resolution of *Stauffer v. Brooks Bros.*,
11 Appeal Nos. 2009-1428, 2009-1430, 2009-1453 (“*Stauffer*”); and

12 WHEREAS, Judge Seeborg held in *Adobe* that the circumstances in which a private party
13 has standing under Article III of the United States Constitution to bring a *qui tam* action for false
14 patent marking under 35 U.S.C. § 292(b) is an issue of first impression currently pending before
15 the United States Court of Appeals for the Federal Circuit in *Stauffer*; and

16 WHEREAS, Judge Seeborg held that once the *Stauffer* decision is rendered, the Federal
17 Circuit's reasoning and analysis will likely bear directly on this Court's consideration of the
18 pending motions to dismiss for lack of subject matter jurisdiction; and

19 WHEREAS, the parties agree that Judge Seeborg's reasoning is equally applicable to this
20 proceeding and, therefore, stipulate and agree that all claims asserted herein against Defendants
21 The Dial Corporation and Johnson Products Company Inc. should be stayed pending a final
22 decision by the Federal Circuit; and

23 WHEREAS, the Stipulation would stay the hearings and all related proceedings on the
24 Motion to Dismiss or, in the Alternative, to Stay, or in the Further Alternative, to Sever (Dkt. No.
25 159) filed by The Dial Corporation on May 7, 2010 as well as the Motion to Dismiss and Motion
26 to Stay in the Alternative filed by Johnson Products Company Inc. (Dkt. Nos. 193 and 194); and

27 WHEREAS, The Dial Corporation has previously stipulated with Plaintiff to extend time
28 to respond to the Complaint to May 7, 2010 (Dkt. No. 27); and

1 WHEREAS, the purpose of the stay is to narrow the litigated issues in this case and the
2 stipulating parties have agreed to further narrow the litigated issues in this case by agreeing that
3 venue and personal jurisdiction are appropriate in the Northern District of California for this case
4 (To be clear, except for the personal jurisdiction and venue aspects of this stipulation, the parties
5 to this stipulation have not waived any other potential right, claim, argument, counterclaim,
6 and/or defense in law or equity.); and

7 WHEREAS, the requested time modification would have no other effect on the schedule
8 for the case because currently no trial date has been set; and

9 WHEREAS, the parties herein have agreed to stay all proceedings until the Federal
10 Circuit issues a final decision in the *Stauffer* decision (or further order of this Court);

11 **THEREFORE, THE PARTIES HEREBY STIPULATE THAT:**

12 These proceedings and all aspects of the case with respect to Defendants The Dial
13 Corporation and Johnson Products Company Inc. are hereby stayed until: (1) the Federal Circuit
14 issues a final decision in *Stauffer v. Brooks Bros.*, Appeal Nos. 2009-1428, 2009-1430, 2009-
15 1453 (i.e., at the expiration of time to file a petition for rehearing or the denial of a timely-filed
16 petition); and (2) further order of the Court in accordance with the Federal Circuit's decision in
17 *Stauffer*; and

18 The responsive pleading of Defendants The Dial Corporation and Johnson Products
19 Company Inc. are hereby due 30 days thereafter; and

20 The stipulating parties have agreed that venue and personal jurisdiction are appropriate in
21 the Northern District of California for this case. However, no other rights, defenses, and/or
22 arguments of either party are intended to be, or are, affected by this stipulation, except for those
23 related to venue and personal jurisdiction expressly stated above. Specifically, nothing in Dial's
24 motion (Dkt. No. 159), Johnson Products' motions (Dkt. Nos. 193 and 194) nor Plaintiff's
25 potential objections and/or responses to those motions are waived, and Dial and Johnson Products
26 specifically reserve the right to reassert those defenses and/or arguments at a later time.

27
28

1 Respectfully submitted,

2 Dated: June 11, 2010

KRIEG, KELLER, SLOAN, REILLEY &
3 ROMAN LLP

4 By: _____ /s/

5 Christopher T. Holland
6 Counsel for The Dial Corporation

7 In accordance with General Order No. 45, Section X(B), the above signatory attests that
8 concurrence in the filing of this document has been obtained from the signatory below.

9 Dated: June 11, 2010

MOUNT & STOELKER, P.C.

10 By: _____ /s/

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Counsel for Plaintiff San Francisco
Technology Inc.

17 Dated: June 11, 2010

Kirkland & Ellis LLP

18 By: _____ /s/

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Counsel for Johnson Products Company Inc.

22 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

23 Dated: 6/15/10

24 By:

25 
26 THE HON. JEREMY FOGEL
27 United States District Court Judge